IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 2741 of 2000

Between:

1. A.P.S.R.T.C., Mushirabad, Hyderabad,

Rep. By its Managing Director.

2. Regional Manager, A.P.S.R.T.C.,

Srikakulam, Srikakulam District.

..... PETITIONER

AND

1. State Transport Appellate Tribunal,

AP.,Hyderabd, rep.its

Presiding Officer.

2. Regional Transport Authority,

Srikakulam rep. By its secretary.

3. K.Rama Rao, s/o.Appala Suri,

Plot no.48, S.V.G.B.Colony,

Srikakulam, Srikakulam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, especially in the nature of writ of certiorari, calling for the records relating to the impugned order dt.21-9-99 made in AP.No.366/98, State Transport Appellate Tribunal/AP.,Hyderabad, setting aside the order in Rc.No.8050/A1/96, dt.26-5-98 of the Regional Transport Appellate / Srikakulam and directing issue of moffusil service permit to 3rd respondent on the route, satyavaram to Budithi, and quash the same as being illegal, without jurisdiction and invalid , and pass such other and further orders to meet the ends of justice.

Counsel for the Petitioner: MR.K.SRINIVAS RAO

Counsel for the Respondent:

No.1 and 2 G.P for Transport

No.3 .MR.V.NARASIMHA REDDY(Advocate)

The Court Made the Following :

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ORDER:

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A.P.S.R.T.C obtained a Rule from this Court for calling upon the respondents to show cause as to why a writ in the nature of Certiorari could not be issued under Article 226 of the Constitution by calling the records relating to the impugned order dated 21-09-1999 made in AP.No.366/98, from the State Transport Appellate

Tribunal , setting aside the order of the Regional Transport Authority and to quash the same.

The third respondent and another have applied the Regional Transport Authority, Srikakulam for grant of pucca stage carriage permit to ply as mofussil service on the route from Satyavaram to Budithi (via) Komarthy Junction, Yerabadu, Urlam, Sundarapuram, Ramaiahvalasa, Gotewada and Budithi Junction. Since, the said application has not been taken up for consideration, W.P.NO.20066/96 was filed, which was disposed of by this court, directing the Regional Transport Authority to consider their applications. The Regional Transport Authority after considering the application of the petitioner and another as item No.2 rejected the same by proceedings in R.C.No.8050/A1/96, dated 26-05-1998 stating that the proposed route-overlapping on the notified route is within the permissible limits of the scheme since the RTC has obtained temporary permit to extend their services upto Budithi village on 16-3-1998 and they were already operating their services on the entire proposed route and if need arises they are ready to provide another bus on the route and therefore, if any further permit is granted to private operators it will lead to congestive competition and will not be conducive to serve the public. Feeling aggrieved by the said rejection the third respondent filed an appeal before the State Transport Appellate Tribunal, A.P. Hyderabad which was opposed by the A.P.S.R.T.C contending that seeking grant of permit amounts to new route unless it is formulated by the State Government as contemplated under Sec.68(3)(ca) of Motor Vehicles Act, 1988 (for short 'the Act') no permit can be granted in favour of the applicant and also placed reliance on APSRTC, MUSHEERABAD, HYDERABAD v. STATE TRANSPORT APPELLATE TRIBUNAL, HYDERABAD AND OTHERS and the overlapping is prohibited in G.O.Ms.No.605 dated 19-05-1975. The State Transport Appellate Tribunal rejected both the contentions and held that since A.P.S.R.T.C applied for temporary permit and running the buses, under the said permit which is an existing route. Therefore, there is no bar for granting permit since the overlapping is 7.6 kms from Satyavaram junction to Urlam under G.O.Ms.No.1151/87 and 2.3 kms from Budithi to Gotiwada junction under G.O.Ms.No.1151/87 which allows overlapping upto 8 kms. In view of the same, appeal was allowed and set aside the rejection order passed by RTC Srikakulam with a direction to issue permit to the third respondent. Correctness of the afore said order is under challenge in the writ petition contending that length of route in

question is 27.6 kms, which overlaps the notified routes in G.O.Ms.No. 605 dated 19-5-1975 for a distance of 2.8 kms from Satyavaram Junction Komarthi junction, and Srikakulam to Srimukhalingam approved in G.O.Ms.No. 1075, dated 9-11-1987 for a distance of 2.8 kms, from Satyavaram Junction to Komarthi Junction and Tekkali to Lukalam approved in G.O.Ms.No.1151, dated 9-11-1987 for a distance of 8.1 kms from Satyavaram Junction to Urlam. The Scheme G.O.Ms.No.605 totally prohibits grant of permit. It exempts only the existing holders of mofussil service routes which partially overlap on the notified routes. In view of the same, setting aside the impugned rejection order and RTA was directed to issue permit on filing valid documents. It is not in dispute that on insertion of section (ca) to sub section (3) of Section 665 of M.V. Act by Act 51 of 94 with effect from 14-11-1994, the route has not been formulated by the State Government, whereas RTC obtained a temporary permit on 16-3-1998 for extension of their service up to Budithi, and the same will not amount to formulation of route by the Government. Under 68(3)(ca) the existing route if any must be on the date when the (ca) was inserted but not formulated by any of the permit holder thereafter, and if any such route formulated, which is without any authority and it is only the State Government which can formulate such route. In view of the same, the reliance placed by the learned counsel for the petitioner on the judgment of this court in N. SWARNALATHA v. MANAGING DIRECTOR, APSRTC, HYDERABAD AND OTHERS is misplaced to the facts of the present case. After coming into force of the amended Act 54 of 1994, it is only the State Government which can formulate the route. In view of the same, the finding arrived at by the State Transport Appellate Tribunal that it is an existing route where the A.P.S.R.T.C is already operating and it is not formulated newly by the appellant is erroneous and contrary to the provisions of the Act. Since, G.O.Ms.No.605 already fell for consideration before this Court in DIVISIONAL MANAGER, APSRTC, VIZIANAGARAM v. STATE TRANSPORT APPELLATE TRIBUNAL, A.P. HYDERABAD AND OTHERS wherein the judgment in A.P. STATE ROAD TRANSPORT CORPORATION, REPRESENTED BY ITS GENERAL MANAGER, MUSHEERABAD, HYDERABAD v. D.C.H. SATYANARAYANA RAJU AND OTHERS has been reversed by the Full Bench holding that prohibition in G.O.Ms.No.605 is also applicable to partial overlapping. In view of the same, impugned order passed by the Appellate Authority does suffer from incurable infirmities, cannot be sustainable and it is accordingly set aside.

Writ Petition is accordingly allowed. No costs.

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05-07-2004

vs/Murthy

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devender Gupta, the Chief Justice on this Monday the Fifth Day of July Two Thousand and Fourt.

To

1. The Preciding Officer,State Transport appellate Tribunal,
   AP.,Hyderabad.

2. The Secretary,Regional Transport Authority,
   Srikakulam.

3. Two CCs to the G.P.for Transport, High court of A.P., Hyderabad (O.U.T).

4. Two CD copies.

5. One spare copy.

THE HON'BLE MR JUSTICE A.GOPAL REDDY

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Dated: 05-07-2004